

Subject: Guidance on the ALJ Loan Program

Sent: August 1, 2018

Dear Chief Administrative Law Judge/Designee -

OPM has received numerous inquiries about any changes that will be made to the administrative law judge (ALJ) loan program as a result of the Supreme Court's decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), and Executive Order 13843 of July 10, 2018, "Excepting Administrative Law Judges From the Competitive Service."

On July 10, 2018, OPM Director Jeff T.H. Pon issued a memorandum to heads of departments and agencies with guidance on implementing the executive order. The memorandum states that regardless of whether ALJs are in the competitive service or the excepted service, OPM's regulations continue to govern interagency loans under 5 C.F.R. 930.208. In light of the *Lucia* decision, OPM is requesting agencies participating in the loan program to make the following submissions in support of new loans and loans that are already underway.

- The department or agency that employs the administrative law judge to be loaned (*i.e.*, the loaning agency) must furnish OPM with documentation that the ALJ's appointment was originally made or later ratified by the department head. This information can be furnished to OPM during the canvassing process.
- The department or agency that has accepted the services of a loaned ALJ (*i.e.*, the receiving agency) must, as soon as practicable, furnish OPM with documentation that its department head has ratified the loan, in substantially the following form:

"I (we) hereby ratify the loan of Jane Doe to the office of administrative law judge in (agency), under terms and conditions prescribed in 5 U.S.C. 3344 and 5 C.F.R. 930.208, and I (we) today approve her appointment as my (our) own action under the Constitution."

Please note that the agency head's approval does not otherwise change the loan procedures in 5 C.F.R. 930.208. It remains the case that an ALJ loan is a reimbursable interagency detail, and that the ALJ remains an incumbent of the position from which he or she was detailed.

The Justice Department has advised agencies that it will be responsible for answering any question about the identity of the appropriate department head for appointments clause purposes. Accordingly, OPM will not independently address this question when reviewing appointment and ratification documents.